

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BENJAMIN TEMPLE

*Plaintiff,*

VS.

WARREN D. CLARK AND  
CRETE CARRIER CORPORATION

*Defendants.*

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Case No. 3:18-cv-566

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DEFENDANT'S NOTICE OF REMOVAL

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Crete Carrier Corporation, Defendant herein, and files this Notice of Removal, removing this case to federal court under 28 U.S.C. §§ 1332, 1441 and 1446, and in support thereof, would show as follows:

**A. Introduction**

1. This lawsuit arises out of an alleged motor vehicle accident. The accident is alleged to have occurred in Kaufman County, Texas. (Plaintiff's Original Petition, p. 2, §IV.)
2. Plaintiff is a citizens of the State of Texas.
3. Plaintiff has named trucking company, Crete Carrier as Defendant, which is not a Texas citizen. Plaintiff has named driver, Warren D. Clark as a Defendant, who is also not a Texas citizen.
4. Plaintiff's pleadings state that he seeks relief of \$1,000,000.00 in this case. (Plaintiff's Original Petition, p. 5, §IV.)

5. Thus, there is diversity of citizenship among the parties and Defendant Crete Carrier, as the only Defendant to have been named and served, removes this case to federal court under 28 U.S.C. §§ 1332, 1441 and 1446.

**B. Basis for Removal**

6. Removal is proper under 28 U.S.C. §§ 1332, 1441 and 1446 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000 and this removal is filed within 30 days after the service on Defendant.

7. There is complete diversity of citizenship as follows:

(a) Plaintiff is a Texas citizen. *See Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 555-56 (5th Cir. 1985).

(b) Defendant Crete Carrier Corporation is corporation organized and existing under the laws of the State of Nebraska, with its principal place of business in Lincoln, Nebraska. Thus, it is a citizen of Nebraska and diverse from Plaintiff. *See* 28 U.S.C. § 1332(a).

8. Plaintiff's pleadings state that he seeks relief in an amount of \$1,000,000. (Plaintiff's Original Petition, p. p. 5, §IV.) *See S.W.S. Erectors Inc. v. Infax Inc.*, 72 F.3d 489, 492 (5th Cir. 1996) (removing defendant can rely on plaintiff's statement of amount in controversy); *see also* 28 U.S.C. § 1446(c).

9. Defendant Crete Carrier's notice of removal is timely, as it is filed within 30 days of its being served with a pleading stating a removable case. *Alim v. KBR, Inc.*, No. 13-11094, 2014 U.S. App. LEXIS 10508, at \*4 (5th Cir. 2014) (unpub.) (30-day deadline for removal runs from the defendant's receipt of a pleading setting forth a removable claim).

10. Defendant Crete Carrier Corporation is the only named defendant that has been

served as of the date of this removal, making the consent of the other defendants to this removal unnecessary. *See* 28 U.S.C. § 1446(b)(2) (requiring consent of all defendants joined and served).

11. Copies of all pleadings, process, orders, and other filings in the state-court suit will be submitted once received to support this notice as required by 28 U.S.C. §1446(a).

12. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending, the 422<sup>nd</sup> Judicial District, is located in this district.

13. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

**C. Jury Demand**

14. Plaintiff has not demanded a jury trial.

**D. Conclusion**

15. There is complete diversity of citizenship and the amount in controversy exceeds \$75,000. Thus, there is diversity jurisdiction over this matter and removal is proper as set forth herein.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the forgoing has been served on counsel of record, on the 12<sup>th</sup> day of March, 2018, as follows:

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